

1
2
3
4
5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**
7

8 SOLOMON M. BROOKS,

9 *Petitioner,*

10 vs.

11 BRIAN WILLIAMS, *et al.*,

12 *Respondents.*

2:10-cv-00045-GMN-LRL

ORDER

14
15 This closed represented habeas matter under 28 U.S.C. § 2254 comes before the
16 Court on a post-judgment motion (#30) to vacate order and for evidentiary hearing filed by
17 petitioner in proper person. This matter was closed by an order and final judgment entered
18 on April 15, 2011, with no appeal being taken. The present *pro se* motion has been filed after
19 the expiration of the period for seeking Rule 59 relief and therefore necessarily arises under
20 Rule 60 of the Federal Rules of Civil Procedure.

21 Petitioner is represented by the Federal Public Defender in this matter. He therefore
22 may not file papers in proper person. There is no right to proceed both through counsel and
23 in proper person in a habeas matter. The motion therefore will be stricken.

24 Petitioner first should consult with his counsel in this matter. It appears that petitioner
25 is out of physical custody and is living in Las Vegas, and counsel's office also is in Las Vegas.
26 Of a number of possible alternatives, that consultation possibly could lead to counsel filing a
27 motion to withdraw, but not necessarily so. In the meantime, petitioner may not file any
28 proper person papers such as the present motion while he still is represented by counsel.

1 Petitioner's counsel is Assistant Public Defender Paul G. Turner, and his office
2 telephone number is 702-388-6577. The office of the Federal Public Defender is located at
3 411 E. Bonneville, Suite 250, Las Vegas, Nevada 89101. However, petitioner first should call
4 and make an appointment with counsel prior to seeking to meet with him. The Court will
5 direct herein that counsel meet with petitioner within thirty (30) days of entry of this order,
6 subject to the ability to request other relief within that time period as appropriate to the
7 circumstances.

8 The Court expresses no opinion as to whether the circumstances outlined in the proper
9 person motion establish a basis for post-judgment relief under Rule 60. This particular action
10 has been, and at present continues to be, closed by a final judgment.

11 Nor does the Court express any opinion as to whether petitioner potentially might be
12 able to file a new petition in a new action. The Court notes that this action was dismissed
13 without prejudice with substantial unexpired time then apparently remaining in the federal
14 limitation period. Moreover, a parolee remains in "custody" for purposes of federal habeas
15 jurisdiction as to a new petition. See *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).
16 Petitioner, whether proceeding through counsel or otherwise, in all events has the final
17 responsibility for seeking appropriate relief through an appropriate procedural vehicle within
18 the one-year time limit for seeking federal habeas relief.

19 The Court holds in the present order only that petitioner may not file the present motion
20 in proper person while he still is represented by counsel in this matter.

21 IT THEREFORE IS ORDERED that the proper person motion (#30) to vacate order
22 and for evidentiary hearing is STRICKEN.

23 IT FURTHER IS ORDERED that, within **thirty (30) days** of entry of this order,
24 petitioner's counsel shall meet and consult, in person, with petitioner, subject to the ability to
25 request other relief within that time period as appropriate to the circumstances.

26 IT FURTHER IS ORDERED that the Clerk of Court shall remove petitioner from the
27 "Represented By" category on the docket sheet, as this Court has not allowed petitioner's
28 counsel to withdraw and petitioner may not represent himself while represented by counsel

1 of record. The Clerk shall carry petitioner's contact information under his name in the left-
2 hand column of the docket sheet, and the Clerk shall expressly reflect in the docket entry for
3 this order that a hard copy of this order was mailed to petitioner at that address, over and
4 above the electronic service on counsel herein.

5 This action remains closed.

6 DATED this 14th day of August, 2012.

7
8
9
10 Gloria M. Navarro
11
12 United States District Judge
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

